

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Joseph G. Rosania, Jr.

In re:

ROBERT H. ANDRICK,
SSN: xxx-xx-7324
BRENDA K. ANDRICK,
SSN: xxx-xx-8821

Debtor.

Case No. 18-17556-JGR
Chapter 13

ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

The issue presented to the Court is whether proposed expenditures for medical marijuana bars confirmation of a Chapter 13 Plan.

BACKGROUND

Robert H. Andrick and Brenda K. Andrick (collectively, "Debtors") filed their Chapter 13 bankruptcy case on August 28, 2018. They are above-median income debtors with primarily consumer debts and are not eligible for relief under Chapter 7 of the Bankruptcy Code.

The Chapter 13 Plan filed in the case proposes monthly payments in the amount of \$681 over a sixty-month period, for a total of \$40,860. The Plan provides for the retention of three motor vehicles and a home, with payments being made directly to the respective secured creditors. Under the Plan, unsecured claims are projected to receive a total amount of \$33,794.

The Debtors' Schedule E/F listed total nonpriority unsecured debt in the amount of \$196,545. Based on the amount of the scheduled unsecured claims, a projected unsecured claim dividend of approximately 17% was proposed through the Plan. Because timely-filed allowed unsecured claims only totaled \$88,076, the unsecured dividend is now projected to be approximately 38%.

The Chapter 13 Trustee objected to confirmation of the Plan, raising numerous grounds. See Doc. 27. The United States Trustee ("UST") filed a separate objection, arguing, as a threshold matter, that the Plan cannot be confirmed because the Debtors seek to divert funds otherwise payable to creditors to purchase medical marijuana. See Doc. 53. The UST argues that the proposed expense for medical marijuana presents an absolute bar to confirmation.

This Court has subject matter jurisdiction over confirmation of the Plan under 28 U.S.C. § 1334, 28 U.S.C. § 157(a), and 28 U.S.C. §§ 157(b)(1) and (b)(2)(L).

THE DEBTORS' DISPOSABLE INCOME AND PROPOSED PLAN

Chapter 13 debtors are required to file a *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C–1). Above-median income debtors must also file a *Chapter 13 Calculation of Your Disposable Income* (Official Form 122C–2).

The Debtors' Form 122C-1 stated current monthly income of \$14,188.95. The current monthly income translates to annual income of \$170,267.40. The reported income only reflects Mr. Andrick's earnings. Ms. Andrick's monthly Social Security benefits of \$1,936.50 are excluded from current monthly income pursuant to 11 U.S.C. § 101(10A)(B).

This compares to Mr. Andrick's income disclosed in the Debtors' Statement of Financial Affairs ("SOFA") of \$187,262 for the 2016 calendar year; \$147,408 for the 2017 calendar year; and \$96,226 prior to the late-August filing in 2018. The Debtors also disclosed Social Security benefits of \$22,782 in 2017 and \$22,722 in 2016.

Form 122C-2 allows certain expenses and debt payments to be deducted from current monthly income and results in a calculation of disposable income. The Debtors claimed four persons for the purpose of determining deductions. In addition to themselves, the Debtors support an adult daughter and granddaughter. The Debtors' disposable calculation is summarized as follows:

Current Monthly Income		\$14,188.95
Less: IRS Expense Allowances:		
Food, Clothing, Other	(\$1,694.00)	
Healthcare Allowance	(\$208.00)	
Housing: Insurance, Other	(\$646.00)	
Vehicle Operating Expense	(\$436.00)	
Vehicle 1 Cost	(\$220.47)	
Taxes	(\$3,692.18)	
Life Insurance	(\$253.00)	
Additional Health Care	(\$2,646.00)	
Telecommunications	(\$138.00)	
		(\$9,933.65)
Less: Additional Expense Deductions:		
Health Insurance	(\$187.50)	
Additional Food and Clothing	(\$58.00)	
		(\$245.50)

Less: Debt Payment:		
Residence	(\$1,455.00)	
Vehicle 1	(\$276.53)	
Vehicle 2	(\$568.00)	
		(\$2,299.53)
Monthly Disposable Income		\$1,710.27

The Debtors' Form 122C-2 claims two additional deductions for special circumstances totalling \$1,110: expenses for cigarettes in the amount of \$210 and expenses for medical marijuana in the amount of \$900. The Debtors contend these additional deductions properly reduce their monthly disposable income to \$600.27.

A plan providing for contributions of \$1,710 per month over sixty-months would result in plan payments totalling \$102,600 and, after payment of administrative expenses¹, yield a return of \$89,360 to unsecured creditors. As stated above, timely-filed unsecured claims total \$88,076.27. Accordingly, allowed claims would receive a 100% dividend under a plan with monthly payments of \$1,710.

The Court also notes that prior to filing the bankruptcy case, Question 17 of the SOFA reflects that the Debtors were making monthly payments of \$1,352 on account of a debt resolution program through Americor Funding. A proposed plan providing for monthly payments of \$1,352 would result in total payments of \$81,120 and funds available to pay unsecured claims in the approximate amount of \$70,028—a pro rata dividend of nearly 80%. Here after filing bankruptcy, the Debtors proposed plan payment is \$681.

The Plan proposed by the Debtors provides for monthly payments of only \$681. This figure is arrived at by subtracting the expenses claimed on Schedule J from the net income listed on Schedule I and exceeds the Debtors' claimed disposable income by roughly \$80.

The Chapter 13 Trustee objected to confirmation of the Debtors' proposed Plan. In addition to objecting to the claimed special circumstances deductions for cigarettes and marijuana, the Trustee argues that the Debtors' Plan was not proposed in good faith. Among other things, the Trustee argues that the Debtors' overstated their tax withholding and included excessive amounts in their Schedule J for food, uninsured medical expenses, miscellaneous spending, gifts, and pet expenses.

The Trustee further argues that the Debtors' calculation of disposable income should be based on a household size of two, rather than four, and that if the household size is four, any additional income received by the Debtors' daughter and granddaughter should be included in the calculation.

The Debtors dispute that their claimed expenses are excessive and argue that their calculation of disposable income is accurate.

¹ Administrative expenses consist of unpaid attorney's fee in the amount \$2,980 and the Chapter 13 Trustee's commission of \$10,260.

These disputes are factual in nature and the Court is not in a position to resolve these issues without receiving evidence.

Nevertheless, the facts relating to the proposed expenditure for the use of medical marijuana are not in dispute and present a separate dispositive legal issue.

BANKRUPTCY AND MARIJUANA

Medical and recreational marijuana use has been legalized under Colorado state law. Nevertheless, under federal law, marijuana continues to be listed as a Schedule I controlled substance under the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* (the “CSA”).

The intersection between the marijuana industry and bankruptcy is generally found where plans of reorganization are proposed to be funded, at least in part, by proceeds generated through the production, sale, or use of marijuana. Courts addressing the issue have found the intersection to be a dead end.

The analysis is relatively straight forward. Regulation of marijuana under the commerce clause falls within Congress’s power. *Gonzales v. Raich*, 545 U.S. 1 (2005). Marijuana is listed as a Schedule I controlled substance. See 21 U.S.C. § 812. As such, under 21 U.S.C. § 841(a)(1), it is “unlawful for any person to knowingly or intentionally ... manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.” Despite being legal under state law, activities associated with the marijuana industry are illegal under federal law and cannot be condoned by the bankruptcy courts. “[A] federal court cannot be asked to enforce the protections of the Bankruptcy Code in aid of a Debtor whose activities constitute a continuing federal crime.” *In re Rent-Rite Super Kegs W. Ltd.*, 484 B.R. 799, 805 (Bankr. D. Colo. 2012).

Rent-Rite involved the dismissal of a Chapter 11 reorganization where approximately 25% of the debtor’s income was generated through leasing warehouse space for marijuana grow operations. *Id.* at 802.

In *In re Arenas*, 514 B.R. 887 (Bankr. D. Colo. 2014), the prohibition against marijuana-related activities was extended to cases under Chapter 7 and Chapter 13. The Debtors operated a marijuana grow business and sought relief under Chapter 7. Because the business became property of the bankruptcy estate, allowing the case to proceed would place the Chapter 7 Trustee in jeopardy of violating the CSA through the administration of the case. *Id.* at 892. Likewise, the conversion to Chapter 13 was not feasible, as the plan would be funded through proceeds from the business. “The Debtors are not entitled to convert their case to a case under chapter 13 because their reorganization would be funded from profits of an ongoing criminal activity under federal law and would necessarily involve the Chapter 13 Trustee in administering and distributing funds derived from the Debtors’ violation of the CSA.” *Id.*

Affirming the decision on appeal, the Tenth Circuit Bankruptcy Appellate Panel succinctly stated: “Can a debtor in the marijuana business obtain relief in the federal

bankruptcy court? No.” *Arenas v. United States Tr. (In re Arenas)*, 535 B.R. 845, 847 (B.A.P. 10th Cir. 2015).

This case presents the other side of the coin. The UST argues that the Debtors’ Plan fails to meet the requirements of 11 U.S.C. § 1325(a) and (b) because it is not proposed in good faith and fails to provide for the payment of all disposable income. Specifically, the Plan is “premised on allowing a \$900 per month deduction from disposable income to purchase illegal drugs.” Doc. 53, p. 1.

The Chapter 13 Trustee and the UST have filed objections to the confirmation of the Debtors’ Plan, triggering the operation of 11 U.S.C. § 1325(b), which provides:

- (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--
 - (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
 - (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Subsection (b)(3) incorporates 11 U.S.C. § 707(b)(2) for purposes of calculating disposable income, including the reference to additional deductions for special circumstances.

Accordingly, the Debtors claim special circumstances deductions on Line 43 of their Form 122C-2 Chapter 13 Calculation of Your Disposable Income of \$210 for “Cigarettes” and \$900 for “Medical Marijuana.”

The UST’s objection argues:

1. The proposed expenditure for the purpose of marijuana is illegal under federal law;
2. No medical exception for the use of marijuana exists under federal law;
3. The Chapter 13 proceeding protects the Debtors’ income from collection activities for five-years;
4. Unsecured creditors are not being paid in full, and under the terms of the plan are therefore subsidizing the purchase of illegal drugs; and
5. The proposed Plan requires the Court to authorize the use of post-petition income (property of the estate) for purchase of illegal drugs.

Because the objection is silent as to the claimed special circumstance deduction for cigarettes, the focus of this decision concerns the deduction for medical marijuana.²

The Debtors offer little by way of legal argument to support the claimed deduction, simply stating: “The expense for medical marijuana is her actual expense, and it is reasonably necessary to be expended. Debtor suffers from a chronic and severely painful medical condition for which marijuana is the only effective remedy. The Debtor uses it only when necessary for pain control. The Debtor does not use it for recreation.” Doc. 52, p. 9. The Debtors argue that because medical marijuana is legal in Colorado, and Ms. Andrick holds a valid license, everything is “ok” and the claimed special circumstances deduction is permissible.

In *United States v. Oakland Cannabis Buyers’ Coop.*, 532 U.S. 483, 121 S. Ct. 1711 (2001), the Supreme Court rejected the notion that marijuana use for medical purposes creates an exception to the application of the CSA. “Furthermore, the very point of our holding is that there is no medical necessity exception to the prohibitions at issue, even when the patient is ‘seriously ill’ and lacks alternative avenues for relief.” *Id.* at 494 n. 7.

Marijuana use, whether for medical or recreational purposes, remains illegal under federal law. The deduction of a medical marijuana expense cannot be allowed as either an ongoing out-of-pocket medical expense or as a deduction for special circumstances.

The Court is not unsympathetic to the Debtors’ plight. However, because the Debtors’ proposed Plan does not contribute all projected disposable income as required under 11 U.S.C. § 1325(b)(1)(B), it cannot be confirmed. Accordingly,

IT IS ORDERED that confirmation of the Debtors’ Chapter 13 Plan filed August 28, 2018 (Doc. 2) is DENIED.

IT IS FURTHER ORDERED that the Debtors shall have until and including **August 8, 2019**, to file an amended plan, failing which the case will be dismissed.

Dated this 25th day of July, 2019.

BY THE COURT:



Joseph G. Rosania, Jr.
United States Bankruptcy Judge

² The Chapter 13 Trustee’s Objection and the UST’s Objection also cite 11 U.S.C. § 1325(a)(3), which requires that “the plan has been proposed in good faith and not by any means forbidden by law.” Because the proposed Plan fails to provide for the payment of “all disposable income” under 11 U.S.C. 1325(b)(1)(B) the Court declines to address the good faith argument at this time.